

§ 26.5

hearing officer, direct or indirect, oral or written, concerning the merits of procedures of any pending proceeding which is made by a party in the absence of any other party.

(b) *Prohibition of ex parte communications.* Ex parte communications are prohibited except where:

(1) The purpose and content of the communication have been disclosed in advance or simultaneously to all parties; or

(2) The communication is a request for information concerning the status of the case.

(c) *Procedure after receipt of ex parte communication.* Any hearing officer who receives an ex parte communication which the hearing officer knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

[48 FR 43304, Sept. 23, 1983; 48 FR 46980, Oct. 17, 1983]

§ 26.5 Disqualification of hearing officer.

When a hearing officer believes there is a basis for disqualification in a particular proceeding, the hearing officer shall withdraw by notice on the record and shall notify the Secretary and the official initiating the action under appeal. Whenever any party believes that the hearing officer should be disqualified from presiding in a particular proceeding, the party may file a motion with the hearing officer requesting the hearing officer to withdraw from presiding over the proceedings. This motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the hearing officer does not withdraw, a written statement of his or her reasons shall be incorporated in the record and the hearing shall proceed.

REPRESENTATION OF THE PARTIES

§ 26.6 Department representative.

In each case heard before a hearing officer under this part, the Department shall be represented by the General Counsel or designee.

24 CFR Subtitle A (4-1-04 Edition)

§ 26.7 Respondent's representative.

The party against whom the administrative action is taken may be represented at hearing as follows:

(a) Individuals may appear on their own behalf;

(b) A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;

(c) A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;

(d) An attorney who files a notice of appearance with the hearing officer may represent any party. For purposes of this paragraph, an attorney is defined as a member of the bar of a Federal court or of the highest court of any State; or

(e) An individual not included within paragraphs (a) through (d) of this section may represent the respondent upon an adequate showing, as determined by the hearing officer, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the case.

§ 26.8 Standards of practice.

Attorneys shall conform to the standards of professional and ethical conduct required of practitioners in the courts of the United States and by the bars of which the attorneys are members. Any attorney may be prohibited by the Hearing Officer from representing a party if the attorney is not qualified under § 26.7 or if such action is necessary to maintain order in or the integrity of the pending proceeding.

PLEADINGS AND MOTIONS

§ 26.9 Notice of administrative action.

In every case, there shall be a notice of administrative action. The notice shall be in writing and inform the party of the determination. The notice shall state the reasons for the proposed or imposed action except where general terms are permitted by 24 CFR part 24. The notice shall inform the party of any right to a hearing to challenge the determination, and the manner and time in which to request such hearing. A supplemental notice may be issued in the discretion of the initiating official

to add to or modify the reasons for the action.

§ 26.10 Complaint.

(a) *Respondent.* A complaint shall be served upon the party against whom an administrative action is taken, who shall be called the respondent.

(b) *Grounds.* The complaint shall state the grounds upon which the administrative action is based. The grounds set forth in the complaint may not contain allegations beyond the scope of the notice of administrative action or any amendment thereto.

(c) *Notice of administrative action as complaint.* A notice of administrative action may serve as a complaint provided the notice states it is also a complaint and complies with paragraph (b) of this section.

(d) *Timing.* When the notice does not serve as a complaint, the complaint shall be served on or before the thirtieth day after a request for hearing is made.

§ 26.11 Answer.

Respondent shall file an answer within thirty days of receipt of the complaint. The answer shall respond specifically to each factual allegation. A general denial shall not be permitted. Where a respondent intends to rely on an affirmative defense it shall be pleaded specifically. Allegations are admitted when not specifically denied in respondent's answer.

§ 26.12 Amendments and supplemental pleadings.

(a) *Amendments.* (1) By right: The Department may amend its complaint without leave at any time within thirty days of the date the complaint is filed or at any time before respondent's responsive pleading is filed, whichever is later. Respondent may amend its answer at any time within thirty days of filing of its answer. A party shall plead in response to an amended pleading within fifteen days of receipt of the amended pleading.

(2) By leave: Upon conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the hearing officer may allow amendments to pleadings upon motion of any party.

(3) *Conformance to evidence:* When issues not raised by the pleadings but reasonably within the scope of the proceeding initiated by the complaint are tried by express or implied consent to the parties, they shall be treated in all respects as if they had been raised in the pleadings, and amendments of the pleadings necessary to make them conform to the evidence shall be allowed at any time.

(b) *Supplemental pleadings.* The hearing officer may, upon reasonable notice, permit service of a supplemental pleading concerning transactions, occurrences, or events which have happened or been discovered since the date of prior pleadings.

§ 26.13 Motions.

(a) *Motions.* All motions after the commencement of the action until decision shall be addressed to the hearing officer.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds for granting the motion.

(c) *Answers.* Within seven (7) days after receipt of any written motion, or within any other period as may be designated by the hearing officer, the opposing party shall answer the motion. Failure to make a timely answer shall constitute a party's consent to the granting of the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.

(d) *Oral argument.* The hearing officer may order oral argument on any motion.

(e) *Motions for extensions.* The hearing officer may waive the requirements of this section as to motions for extensions of time.

(f) *Rulings on motions for dismissal.* When a motion to dismiss the proceeding is granted, the hearing officer shall make and file a determination and order in accordance with the provisions of § 26.24.

§ 26.14 Form and filing requirements.

(a) *Filing.* An original and two copies of a request for a hearing shall be filed with the Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC